

#### REMARKS/ARGUMENTS

Claims 1-17 have been canceled.

Claim 18- 29 have been added.

The Examiner is directed to Figure 9 of U.S. Patent 6,325,085 and col. 4, lines 55-64, said portions having been incorporated by reference herein.

In response to the Office Action of December 5, 2003, Applicant requests re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

#### Rejections under 35 USC 112

Claims 1, 12 and 13 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The grounds of rejection set forth by the Examiner are as follows:

Claim 1 states that the panel is spaced apart from the structure "a minimum deflection distance." The "minimum deflection distance" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claim 13 states: "a maximum deflection of approximately 20% before

failure and air permeability of approximately 250cfm at a wind force of 1 inch Hg." It is unclear how the "maximum deflection" is represented as a non-dimensional percentage value, since "deflection" is a dimensional value, typically having length units (eg. mm, cm, inches, feet, etc.). Furthermore, if a percentage value is to be claimed, it must be based upon a characteristic dimension of the "panel" that changes or alters in some manner, within a specific plane within which the characteristic dimension resides. For example, a relationship involving the ratio of the original, non-deflected characteristic length to the deflected characteristic length, or a strain value, wherein the change in the characteristic length is divided by the original, non-deflected length. Specifically regarding the "air permeability" of approximately 250cfm must be based on a pressure, not simply a force of 1 inch Hg. Further along this same line of reasoning, it is unclear if the pressure force of 1 inch Hg is considered to be "gauge pressure," "absolute pressure," "dynamic pressure," or a combination thereof. Additionally, there are various methods of which a volumetric flow rate is calculated. It is typically based upon a characteristic area of material through which the flow rate is calculated. It is unclear what method and/or characteristic area value the applicant is applying in determining the air permeability of approximately 250 cfm.

Claim 12 recites the limitation "said curtain means" in line 3. There is insufficient antecedent basis for this limitation in the claim.

The rejected claims have now been canceled by the instantly filed amendment, and the new claims have been worded so as not to include the objectionable language. Thus it is respectfully submitted that this ground of rejection has been overcome.

**Obviousness-Type Double Patenting Rejection:**

Claim 1 has been rejected under the judicially created doctrine of double patenting over claim 10 of U. S. Patent No. 6,325,085 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

It is the Examiner's position that the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a kit or device for protecting a portion of a structure comprising a flexible material or textile with a fail/burst strength of 61.3 psi, which falls within the range of 61.3 and 675 psi; the flexible material or textile having a mesh or interstice size being greater than 3/16 inches = 4.7625 mm, which falls within the range of 0.6 to 4.8 mm, the mesh or interstice size chosen to prevent passage of wind born objects of the corresponding

size (3/16 inches); and edges having means for securing the textile material corresponding to a peripheral hem "adapted to" secure the panel to the structure.

Furthermore, the Examiner indicates that there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim 1 has been cancelled. Claims 18-29 have been added. A Terminal Disclaimer has been filed with the previous response, and it is requested that said Terminal Disclaimer be maintained in order to obviate any such similar rejection that the Examiner may deem appropriate with regard to the newly filed claims.

Thus, it is respectfully submitted that any rejection for obviousness-type double patenting has been overcome.

**Rejection under 35 USC 103(a)**

Claims 1-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Gitlin et al. and applicant's disclosure. Gitlin et al. disclose a protective barrier device for protecting frangible portions of a structure from wind force and wind born objects (Figs. 1-10) (Gitlin et al: col. 2, lines 9-17) having at least one panel (22, 23, 24); a peripheral hem

(26) "adapted to" secure the panel to the structure whereby the panel is spaced apart from the structure a minimum deflection distance to allow for deceleration of objects impacting the panel before the objects impact the frangible portions of the structure; wherein the panel is a flexible textile formed of synthetic threads of polypropylene or polyethylene resistant to ultra violet, biological and chemical degradation and further being porous to light in various percentages of transparency while simultaneously being porous to wind (Gitlin et al.: col. 3, lines 23-46); and wherein the peripheral hem has a plurality of releasable fasteners (69), some of the fasteners "adapted to" to attach to ground anchors (62) to secure the panel in the spaced apart relation to the structure.

Applicant discloses that "current impact test of certain locales" requires a wood 2x4 stud to be shot at a protective barrier exerting a total force of approximately 230 pounds, or 61.3 pounds per square inch (psi) (page 10, lines 7-14). Applicant further discloses that building code regulations of Dade County, Fla. Require that the smallest diameter missile with which they are concerned is 3/8 inches = 9.525 mm (page 20, lines 20-23). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the protective barrier device disclosed by Gitlin et al., by employing a flexible textile fabric having the claimed physical

properties to meet or exceed current standards in testing and building code regulations required by particular locales. In specific regards to claims 6 and 7, it is considered well known in the art to provide various layers, coatings or films such as vinyl to textiles and fabrics to increase their resistance to moisture penetration as well as increase durability.

Claims 13-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gitlin et al. and applicant's disclosure. Gitlin et al. disclose a protective barrier device for protecting frangible portions of a structure from wind force and wind born objects (Figs. 1-10) (Gitlin et al: col. 2, lines 9-17) having at least one panel (22, 23, 24); a peripheral hem (26) "adapted to" secure the panel to the structure whereby the panel is spaced apart from the structure a minimum deflection distance to allow for deceleration of objects impacting the panel before the objects impact the frangible portions of the structure; wherein the panel is a flexible textile formed of synthetic threads of polypropylene or polyethylene being porous to light in various percentages of transparency while simultaneously being porous to wind due to variations in mesh size (Gitlin et al.: col. 3, lines 23-46); having upper and lower edges, the lower edge "adapted to" attach to the ground in such a manner to secure the panel in the spaced apart relation to the structure. Applicant discloses that "current impact test

of certain locales" requires a wood 2x4 stud to be shot at a protective barrier exerting a total force of approximately 230 pounds, or 61.3 pounds per square inch (psi) (page 10, lines 7-14). Applicant further discloses that building code regulations of Dade County, Fla. Require that the smallest diameter missile with which they are concerned is 3/8 inches = 9.525 mm (page 20, lines 20-23). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the protective barrier device disclosed by Gitlin et al., by employing a flexible textile fabric having the claimed physical properties to meet or exceed current standards in testing and building code regulations required by particular locales. Furthermore, Gitlin et al. disclose that variations in the mesh size of the flexible textile fabric can be made to allow for variations in desired porosity of light and wind. These changes in mesh size, in turn, inherently vary the "physical" characteristics of the flexible textile fabric, thus achieving various values of "maximum deflection" percentages, such as 20% before failure, as well as variations of porosity of wind such as 250cfm at a wind force of 1 inch Hg. Additionally, it is well within the capabilities of one of ordinary skill in the art to modify the mesh size or choose a particular flexible textile fabric having the desired mesh size, and thus, the inherent physical properties associated therewith; to protect a

building structure based on building code requirements of particular locales. In specific regards to method claims 14-16, the claims have not been given any patentable weight for they fail to further limit the article claim 13.

The previously rejected claims are now canceled.

It is respectfully submitted that the reference to Gitlin, taken alone or in combination with the Dade County guidelines, fail to teach or suggest the instantly claimed process of

"maintaining integrity of a structure containing frangible portions subject to impact from wind-borne objects comprising:

providing a protective barrier device formed of a flexible mesh material having a burst strength greater than 61.3 psi and an interstice size constructed and arranged to prevent passage of wind-borne objects greater than about 3/16 inch diameter;

placing said protective barrier device in juxtaposed relation to said frangible portions of said structure; and

securing said protective barrier to said structure;

wherein said protective barrier provides reduction of wind force sufficient to maintain the integrity of said structure."



Gitlin teaches use of a mesh structure or harness which wraps about an entire structure and is anchored into the ground in such a manner that the "downward force of the apparatus increases as wind velocity increases" (col. 1, lines 60-61). Referring to Gitlin, at col. 4, lines 2-8, a panel is suspended from the harness and suspended so as to provide additional protection to windows and the like. This does not provide a teaching of securing the protective barrier to the structure as instantly claimed.

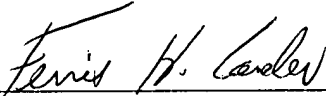
On the contrary, the instantly claimed invention teaches a process of protecting a structure by placing a protective barrier device in juxtaposed relation to the frangible portions of the structure and **securing the protective barrier to said structure**. This is contrary to the methodology described by Gitlin and is, in fact, directly opposite to that which is both taught and required by Gitlin, as outlined *supra*.

Thus, it is respectfully submitted that the rejections over Gitlin are overcome by the instantly filed claims, and it is respectfully requested that said claims are now in condition for allowance.

SUMMARY

In light of the foregoing remarks and amendment to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,

  
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